

REMARKS

Claims 1, 2, 7 and 10 are currently amended, and claims 8 and 9 have been cancelled. New claims 15-25 are currently added. Thus, claims 1-7 and 10-25 appear in the application for the Examiner's review and consideration. New claims 15-25 and the amendments to claims 1, 2, 7 and 10 are supported by the original claims and specification, for example page 3 lines 25-33, page 5 lines 24-34, page 6 line 28-page 7 line 18, the Examples on pages 8-12 and original claims 1, 2, and 7-12. No new matter has been added. As no new matter has been introduced, Applicants respectfully request that the amendments and the new claims be entered at this time.

Claims 8 and 9 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that claims 8 and 9 are confusing because it is unclear when the recited steps are performed. The Examiner states that it appears that these claims recite alternative methods of making the microcapsules rather than additional, further limiting steps of the method of claim 7.

In response, Applicants has now cancelled claims 8 and 9 without prejudice. Applicants note that new claims 15 and 19, directed to methods of the preparation of perfuming or flavoring microcapsules, comply with the requirements under 35 U.S.C. §112, second paragraph.

In view of the foregoing, Applicants respectfully request that the rejection under 35 U.S.C. §112, second paragraph be withdrawn.

Claims 1-6 and 11-14 are rejected under 35 U.S.C. §102(e) as being anticipated by either Glaug et al. ("Glaug" - US 6,369,290) or Murphy et al. ("Murphy" - US 6,555,098). The Examiner states that Glaug teaches deodorant articles containing an odor control powder comprising 0.5-4% of fragrance oil and 5-45% of sodium bicarbonate microencapsulated in 50-90% of starch. The Examiner further states that Murphy teaches cosmetic deodorant products containing encapsulated powder comprising sodium bicarbonate and 0.1-20% of a fragrance ingredient. The Examiner states that the "fireproofing agent susceptible of reducing the dust hazard explosive class of the microcapsule to an St-1 classification" is inherent in the prior art because the prior art teaches the same fireproofing agent as claimed in the instant claims, i.e. sodium bicarbonate. With regard to claims 12 and 24, the Examiner

states that, although neither reference teaches the method of claim 7, claims 12 and 14 are in product-by-process format, and as such, it is the novelty and patentability of the instantly claimed products that need to be established and not the recited product steps. Accordingly, the Examiner asserts that either Glaug or Murphy teaches claims 1-6 and 11-14.

Applicants respectfully request reconsideration of these statements. Applicants have now amended claim 1 to exclude the use of sodium bicarbonate as a fireproofing agent, and to recite preferred fireproofing agents in claim 2. Accordingly, Applicants assert that neither Glaug or Murphy anticipates the instant invention, since they do not teach the same fireproofing agent as presently claimed, nor do they disclose or teach a fireproofing agent susceptible of reducing the dust hazard explosive class of the microcapsule to an St-1 classification.

Claim 4 was also re-written in independent form. This claim recites that the fireproofing agent comprises from 5 to 15% by weight of the dry weight of the microcapsule. Applicants have calculated the composition of the capsules of Murphy and Glaug. In Example III of Murphy (col.9), particles are made which have 33% coating (polyethylene glycol, propylene glycol butyl ether, etc), potassium bicarbonate (63%) and coumarin powder (4%). In Example I (col. 8, lines 9 - 31), 30% of the polymeric coating refers to the total of the capsules. In summary, Murphy teaches capsules having 61.6 wt.-% (Example I) and 62.2wt.-% (Example II) of bicarbonate, about 4-7% of flavor, the rest being the polymeric coating. On the other hand, Glaug mentions capsules having 3% fragrance oil, 70% starch, and, 25% sodium bicarbonate (see Example in col. 4). Claim 4 is patentable over these examples because a much lower amount of fireproofing agent is disclosed and claimed. Although the references disclose a much wider range, it includes inoperative amounts, as 15% is the maximum amount to be used, and larger amounts have a negative impact on the fragrance retention in the capsules.

For all these reasons, the rejections based on Glaug and Murphy et al under 35 U.S.C. §102(e) should be withdrawn.

Claims 7 and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Glaug. The Examiner states that Glaug teaches odor control powder comprising microencapsulated fragrance oil and sodium bicarbonate. The microencapsulated particles are produced by: (1) adding sodium bicarbonate to the aqueous slurry of the microencapsulating agent; (2) adding the fragrance oil to the slurry; and (3) spray-drying the

slurry to obtain the microencapsulated particulate. The Examiner states that this reference differs from the instant invention in that it teaches adding fragrance to the sodium bicarbonate/microencapsulating agent aqueous slurry rather than adding sodium bicarbonate to fragrance/microencapsulating agent aqueous emulsion as claimed herein. However, the Examiner asserts that there appears to be no criticality in the order of adding the ingredients since the prior art recognizes and obtains the same result, and accordingly one having ordinary skill in the art would have been motivated to determine the optimal order by routine experimentation.

Applicants respectfully request reconsideration of these statements. Applicants have now amended claims 7 and 10 to exclude the use of sodium bicarbonate as a fireproofing agent. Glaug does not teach the sodium bicarbonate or any other compound can be used as a fireproofing agent. Rather Glaug teaches that sodium bicarbonate promotes skin wellness by controlling the pH levels of the fragrance oil, starch and human waster (Abstract). Since Glaug et al does not teach the sodium bicarbonate or any other compound can be used as a fireproofing agent, but rather teaches a completely different function for this agent, a person of skill in the art would not be motivated to use the teachings of Glaug et al to perform the methods of claims 7 and 10. Therefore, Applicants assert that Glaug does not teach nor render obvious the instant invention.

In view of the foregoing, Applicants respectfully request that the rejection based on Glaug under 35 U.S.C. §103(a) be withdrawn.

In view of the above, the entire application is believed to be in condition for allowance, early notice of which would be appreciated. Should any issues remain, a personal or telephonic interview is respectfully requested to discuss the same in order to expedite the allowance of all the claims in this application.

Date: _____

11/12/04

Respectfully submitted,



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